

Panaji, 27th January, 1978 (Magha 7, 1899)

SERIES II No. 43

OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

Department of Personnel and Administrative Reforms

Order

No. 5-11-74-Div.I

Whereas a notice has been given by Capt. L. B. P. Lobo, Captain of Ports, under sub-rule (1) (a) and (b) of Rule 5 of the Central Civil Services (Temporary service) Rules, 1965, terminating his services after a period of one month.

Whereas the said Notice is dated 20-12-1977 and received in the Industries and Labour Department, Secretariat, on the same day, the services of Capt. L. B. P. Lobo stands terminated with effect from afternoon of 19th January, 1978.

Now, therefore, the Administrator of Goa, Daman and Diu is pleased to direct that Capt. L. B. P. Lobo should hand over charge of the post of Captain Ports to Capt. A. Rebello, Dy. Captain of Ports, who will officiate as Captain of Ports, Panaji, w. e. f. 20-1-1978 in addition to his own duties until the post is filled up on regular basis.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. J. Menezes, Under Secretary (Personnel).

Panaji, 19th January, 1978.

Planning Department

Order

No. 4-25/74 PLG

On the recommendations of the Departmental Promotion Committee, Shri R. V. Urankar, Statistical Officer from Common Statistical Cadre, at present working in the Directorate of Health Services, is hereby promoted on an ad hoc basis, as Dy. Director Group 'A' (Gazetted) in the scale Rs. 700-40-900-EB-40-1100-50-1300 with immediate effect, and posted in the Bureau of Economics, Statistics and Evaluation, Panaji against the post of Dy. Director created for "Economic Census" vide order No. 4-4/74 PLG dated 20-5-1977. The promotion is for a period of six months in the first instant.

Shri H. K. Ravinder, Statistical Officer from the Bureau of Economics, Statistics and Evaluation will hold the additional charge as Statistical Officer in the Directorate of Health Services until further orders.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. K. Bhandare, Under Secretary (Forest & Agriculture.)

Panaji, 10th January, 1978.

Works, Education and Tourism Department

Public Works Department

Office of the Chief Engineer

Addendum

No. PWD/CE/1477/1/78

Sub: Rules for accommodation at Goa Sadan, 18 Retandon Road, New Delhi.

Read: Government Order No. PWD/CE/Adm/1477/68/77 dated 11th August, 1977.

Government is pleased to add to para 'G' of the above Order under reference dated 11th August, 1977, and to include Chief Engineer, (P. W. D.) also, who is Ex-officio Additional Secretary to the Government, alongwith Secretaries for entitlement to occupy the two A. C. rooms whenever they are available.

Para 'G' now stands to read as follows:

"Two V. I. P. suites on the first floor are reserved for the Lt. Governor and the other for the Chief Minister, as and when they are on tour to Delhi. Other accommodation available on the first floor can be occupied by the Hon. Speaker, Ministers, Dy. Speaker, Chief Secretary, other secretaries, and Chief Engineer, P. W. D., according to availability of accommodation."

This is issued with the approval of Lt. Governor vide file No. PWD/CE/6469 dated 1-1-1978.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

C. G. Desai, Chief Engineer & Ex-officio Addl. Secretary to the Government of Goa, Daman and Diu.

Panaji, 12th January, 1978.

Local Administration and Welfare Department

Order

No. 4-24-77-UDD

Read: Offer of Appointment no. 4-24-77-UDD dated 25th June, 1977.

On recommendation of the UPSC Shri S. V. Sangnal, is temporarily appointed as Associate Town Planner, in the Town and Country Planning Department, Panaji in the scale of Pay of Rs. 1100-50-1600 with effect from 15-10-1977 (F.N.) on a pay of Rs. 1100/- p. m. In addition to pay he will be entitled to draw such allowances as may be sanctioned by the Government from time to time.

The appointment is subject to the conditions specified in the Government Offer of appointment No. 4-24-77-UDD dated 25th June, 1977 and the rules and regulations laid down by the Government from time to time.

The appointment is made against the post of Associate Town Planner created vide Government order no. 4-12-73-LSG dated 3-10-75.

Shri S. V. Sangnal, Associate Town Planner has been examined by the Medical Board, Goa Medical College, Panaji

and he has been declared medically fit for the Government job by the aforesaid Board.

By order and in the name of the Administrator of Goa, Daman and Diu.
E. N. Rodrigues, Under Secretary (Revenue).
Panaji, 13th January, 1978.

Order

No. 2/5-77-Coop/LAWD/2358

In exercise of the powers conferred by Rule 102 of the Co-operative Societies Rules, 1962 for the Union Territory of

Revenue Department

Notification

No. RD/LQN/69/75

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. for providing parking facilities at Dona Paula.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be

Goa, Daman and Diu and in supersession of the earlier Government order No. CDB/COOP/26/70-71 dated 20-5-1971, the Administrator of Goa, Daman and Diu is pleased to appoint the Secretary, Revenue Department, Government of Goa, Daman and Diu, to hear co-operative appeals under section 152 of the Maharashtra Co-operative Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu.

By order and in the name of the Administrator of Goa, Daman and Diu.

E. Noronha Rodrigues, Under Secretary (Revenue).
Panaji, 17th January, 1978.

disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector, Goa North Division, Panaji, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

- 1. The Collector of Goa, Panaji-Goa.
- 2. The Deputy Collector, Goa North Division, Panaji-Goa.
- 3. The Director of Tourism, Panaji-Goa.
- 4. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector, Goa North Division, Panaji, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/Ward	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Tiswadi	Panaji	5/part	P. T. Sheet No. 165	H. Dr. Agnelo de Basilio Dias of Dona Paula. <i>Boundaries:</i> North: Road, Property No. 2 P. T. Sheet No. 130. South: 5/165 and 2/190. East: 5/165, 2/190 and Road. West: 5/165 and 2/190.	650.00
Total						650.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).
Panaji, 23rd January, 1978.

Notification

RD/LQN/392/77

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. 12 MGD-Water Supply Scheme for transporting, laying and jointing C.I Gravity Main from Curti to Vasco.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894

(hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24.

of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector, Goa South Division, Margao, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following

officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector, Goa South Division, Margao-Goa.
3. The Superintending Engineer V (PHE), P.W.D., Altinho, Panaji-Goa.
4. The Executive Engineer, Works Division IX (PHE), P. W. D., Tonca, Caranzalem-Goa.
5. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector, Goa South Division, Margao, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE (Description of the said land)

Sr. No.	Taluka	Village/Ward	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Ponda	Borim	1	—	Comunidade of Borim, Ponda, Goa. <i>Boundaries:</i> North: Government Property. South: Ponda-Borim Road. South: Plot belonging to Comunidade. East: Government Property, Ponda-Borim Road. West: — do —	762.20
2.	Salcete	Loutulim	2	—	1. Santana Araujo Unifio Society. 2. Remedio's Araujo Govt. Printing Press. 3. Constancio Araujo, Bombay. <i>Boundaries:</i> North: Government Property, Borim-Loutulim Road. South: Plot belonging to Santana Araujo. East: Public Lino Govt. Property. West: Government Property, Borim-Loutulim Road.	189.00
3.	"	"	3A	—	Shri Percival V. Noronha, Secretariat, Panaji. <i>Boundaries:</i> North: Plot belonging to Percival Noronha. South: Government Property. East: Plot belonging to Percival Noronha. West: Plot belonging to Percival Noronha.	22.50
4.	"	"	3B	—	Shri Percival V. Noronha, Secretariat, Panaji. <i>Boundaries:</i> North: Government Property. South: Plot belonging to Percival Noronha. East: Government Property, Loutulim Borim Road. West: Plot belonging to Percival V. Noronha.	590.00
5.	"	"	4	—	Shri Josef Torcate D'Sa, Carvata — Loutulim. <i>Boundaries:</i> North: Government Property. South: Government Property Nalla. East: Government Property Loutulim Cortalim Road. West: Plot belonging to Shri Josef Torcate D'Sa.	32.00
Total						1,595.70

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaji, 20th January, 1978.

Notification

No. RD/LQN/391/77

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Improvement of Kotti Sarvona Road in a length 3535.70 metres.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise,

or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector, Goa North Division, Panaji-Goa, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector, Goa North Division, Panaji-Goa.
3. The Superintending Engineer II, Circle II, P. W. D., Altinho-Panaji-Goa.
4. The Executive Engineer, Works Division II (R&B), P. W. D., Panaji-Goa.
5. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector Goa, North Division, Panaji-Goa, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/ Ward	Plot No.	Survey No	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Bicholim	Karapur	1	—	Arjun Jaganath Gauncar, Karapur, Bicholim. <i>Boundaries:</i> North: Arjun Jaganath Gauncar. South: — do — East: Pratapsingrao Rane. West: P. W. D. Road.	660.00
2.	"	"	2	—	Pratapsingrao Rane, Sanquelim. <i>Boundaries:</i> North: Pratapsingrao Rane. South: — do — East: Mahadev Vishram Bhavakar. West: Arjun Jaganath Gauncar.	2,680.00
3.	"	Sarvana (Dhauskar wada)	3	—	Mahadev Vishram Dawaskar, Dewaskarawarwada, Sarvana. <i>Boundaries:</i> North: Mahadev Vishram Dawaskar. South: — do — East: Vishwanath Hari Sinai Karapurkar. West: Pratapsingrao Rane.	3,295.00
4.	"	Sarvana	4	—	Vishwanath Hari Sinai Karapurkar, Karapur. <i>Boundaries:</i> North: Vishwanath Hari Sinai Karapurkar. South: — do — East: Comunidade Property. West: Mahadev Vishram Dauskar.	425.00
5.	"	"	5	—	Comunidade Property. Tenant — Kashinath G. Sawant. <i>Boundaries:</i> North: Comunidade Property. South: Mukund Nila Pednekar. East: Sanghapurush Temple Property. West: Vishwanath Hari S. Karapurkar.	525.00
6.	"	"	6	—	Mukund Nila Pednekar, Bicholim. <i>Boundaries:</i> North: Comunidade Property. South: Mukund Nila Pednekar. East: Sanghapurush Temple Property. West: Comunidade Property.	30.00
7.	"	"	7	—	Sanghapurush Temple, Sarvana. <i>Boundaries:</i> North: Sanghapurush Temple Property. South: — do — East: Appa Satu Sawant. West: Mukund Nila Pednekar.	1,492.00

1	2	3	4	5	6	7
8.	Bicholim	Sarvana	8	---	Appa Satu Sawant, Sarvana. 1) Saraswati Sawant. 2) Atma Arjun Sawant. 3) Govind Guno Sawant. 4) Mukund S. Sawant. 5) Ankoosh R. Sawant. 6) Sagun B. Sawant and 7) Gustulo M. Sawant. <i>Boundaries:</i> North: Appa Satu Sawant. South: --- do --- East: Municipal Council, Bicholim. West: Sangapurush Temple Property.	2,533.00
9.	"	"	9	---	Property of Municipal Council, Bicholim. <i>Boundaries:</i> North: Municipal Council Bicholim Property. South: Appa Satu Sawant. East: P. W. D. Road. West: Appa Satu Sawant.	2,500.00
Total						14,140.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaji, 20th January, 1978.

Public Health Department

Order

No. V. 9-68-GMC-4290

Read: — Government Notification No. V.9-68.GMC-4290 dated 24-9-1977.

In supersession of Government order of even number dated 2-12-1977, Dr. M. G. Gogate, Professor of Physiology, Goa Medical College, will continue to work as Member Secretary, of Hospitals visiting Committee.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary (Health).

Panaji, 17th January, 1978.

Industries and Labour Department

Order

No. IRM/CON/(135)/77/IT-21/77

Whereas the Lieutenant Governor of Goa, Daman and Diu is of the opinion that an industrial dispute exists between the employers in relation to the management of M/s Kane Industries, Navelim, Margao, Goa, and their workman Shri R. V. Kunde, Accounts Clerk, represented by the Kane Industries Employees Union, Navelim, Margao, Goa, in respect of the matters specified in the Schedule hereto annexed (hereinafter referred to as the 'said dispute');

And whereas, the Lieutenant Governor of Goa, Daman and Diu considers it expedient to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Lieutenant Governor of Goa, Daman and Diu hereby refers the said dispute for adjudication to the Industrial Tribunal, Goa, Daman and Diu, Dona Paula (Goa), constituted under section 7-A of the said Act.

SCHEDULE

"Whether the action of the management of M/s Kane Industries, Navelim, Margao, Goa, in dismissing from service, Shri R. V. Kunde, Accounts Clerk, with effect from 12-8-1977 is legal and justified?

If not, to what relief the workman is entitled to?

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary, Industries and Labour.

Panaji, 16th January, 1978.

Order

No. LC/1/ID(174)/73/IT-14/74

The following award given by the Industrial Tribunal, Goa, Daman and Diu on an industrial dispute between the Management of M/s. McDowell and Co. Ltd., Margao, Goa and their workman Shri Dominic Fernandes, General Foreman, employed under them is hereby published as required under the provision of Section 17 of the Industrial Act, 1947 (XIV of 1947).

G. M. Sardessai, Under Secretary, Industries and Labour.

Panaji, 10th January, 1978.

Before Shri R. V. Kollali, Presiding Officer, Industrial Tribunal-Cum-Labour Court, Government of Goa, Daman and Diu

PRELIMINARY AWARD

Reference No. IT/28/74

Workmen represented by The General Secretary, National Union of General Employees (Goa), Post Box No. 87, Vasco-da-Gama, Goa.

... 1st Party

V/s.

M/s. Mc Dowell and Co. Ltd., Margao Goa. (since changed to Bethora, Ponda—Goa.)

... 2nd Party

By Government Order No. 19 of 25-3-1974, the dispute arising out of the suspension and dismissal of Shri Dominic Fernandez by the Management and the strike resorted to by the workmen over the suspension of Shri Dominic Fernandez was referred to this Tribunal for adjudication. The reference was made by the consent of both the sides to the dispute. The schedule to the reference has been set out fully in the annexure.

The management raised, inter alia, a contention that Shri Dominic Fernandez was not a workman within the meaning of the Industrial Disputes Act. The parties led their evidence on this particular contention and argued their respective cases. A finding has been recorded by this Tribunal upholding the management's contention that Shri Dominic Fernandez was not a workman within the meaning of the Industrial Disputes Act, 1947. The annexure contains the reasonings with the finding on the said contention. The parties were informed of the finding recorded. The first party Union has requested by a memo that an award be passed in so far as the finding is concerned. Accepting the request, the Tribunal proceeds to make the following preliminary award making it clear that the reasons and finding annexed to this award shall be read as part of this preliminary award.

AWARD

For the reasons recorded in the annexure, it is held that Shri Dominic Fernandez is not a workman within the meaning of the Industrial Disputes Act.

Dated: — 15-12-1977. (R. V. KOLLALI)
Place: — Dona Paula. Presiding Officer.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary, Industries and Labour.

"ANNEXURE"

Before Shri R. V. Kollali, Presiding Officer, Industrial Tribunal Cum Labour Court, Dona Paula

Reference No. IT/28 of 1974

Workmen represented by The General Secretary, National Union of General Employees (Goa), Post Box No. 87, Vasco da Gama, Goa.

... First Party

Versus

M/s. Mc Dowell & Co. Ltd., Margao, Goa, (since changed to Bethora, Ponda, Goa.)

... Second Party

By Government Order No. 19 of 25-3-1974 the Government of Goa, Daman and Diu referred this dispute for adjudication by this Tribunal. The schedule to the order runs as follows:—

1. Whether the contention of the workmen that action of the Management of M/s. Mc Dowell & Co. Ltd., Margao (Goa) in suspending Shri Dominic Fernandes, General Foreman, with effect from 13-12-1973 pending enquiry, was illegal and unjustified, is correct?

If so, to what relief Shri Dominic Fernandes is entitled?

2. Whether the action of the Management of M/s. Mc Dowell & Co. Ltd., Margao (Goa) in dismissing Shri Dominic Fernandes, General Foreman, from their services with effect from 7-1-1974, was legal and justified?

If not, to what relief Shri Dominic Fernandes is entitled?

3. Whether the action of the workmen in resorting to strike with effect from 18th December, 1973 and the action of the Management of M/s. Mc Dowell & Co. Ltd., Margao (Goa) in resorting to lockout with effect from 22-12-1973, was legal and justified?

If not, to what relief the parties are entitled?"

After the claim-statement was filed by the First Party, the Second Party by its written statement contended, inter alia, that Dominic Fernandes whose suspension and dismissal

formed the subject matter of point Nos. 1 and 2 of the Schedule was not a workman within the meaning of Section 2 (5) of the Industrial Disputes Act in as much as at the relevant time Dominic Fernandes was a General Foreman with a salary of more than Rs. 500/- per month and employed in a supervisory capacity. So this question is of the greatest importance in the dispute that has been referred for adjudication. If the evidence shows that the concerned employee is not a workman within the meaning of the Industrial Disputes Act as contended by the Second party, the dispute in so far as it forms the subject matter of point Nos. 1 and 2 of the reference ceases to be an industrial dispute. Otherwise, it is an industrial dispute. The two contesting parties have led evidence on the question as to whether Dominic Fernandes is a workman or not within the meaning of the Industrial Disputes Act.

It should be stated here that by Order No. 18 of 22-3-1974 the Government referred the question of the legality and justification of the strike by the workman of Kesarval Beverages Ltd., an allied concern, from 18-12-1973 and the lock-out by the management from 22-12-1974 for adjudication and the said reference is registered at No. IT/25 of 1974. The two concerns are the two Goa-region units of a concern from Bangalore. The two proceedings are going on together and on question now for decision, the First Party's evidence has been recorded in this proceeding while the management's evidence has been recorded in IT/25/74. This was so done because the management's witness was to go out of India on some assignments and he would not be easily available for giving evidence. In view of this circumstance, the statement of the management's witness was allowed to be on all the points he was to speak and he was allowed to be cross examined extensively on all the points of his evidence. That, however, does not mean that the management's evidence in the dispute is concluded. Only one of their witness has been completely examined. That is all. As far as the First Party is concerned, the evidence has been restricted to the question of status of Dominic Fernandes.

Turning, now, to the evidence on the question of the status of the employee, it is to be seen that in the beginning, he was the car driver allotted to the management's witness who was the Technical Executive of both the concerns. The Technical Executive noticed the good "mechanical mind and approach" of his driver and also that the driver knew "welding and all other aspects of machine". The driver "helped in the setting up of a small bottling plant for McDowell. When the brewery was being built further, the driver did a lot of work, helped in the erection of machinery of pasturizer plant" and when the machinery was removed from Cortalim to Ponda he helped "in setting up the machinery at the new place also". His abilities were recognised by the Management. So from being a car driver who had joined the concern in 1970, he was promoted to the post of the General Foreman with effect from 1-10-1972 with a consolidated salary of Rs. 475/- per month in the scale of Rs. 425-25-575. (See Exhibit W1 dated 31-10-1972). Exhibit W1 also informed the employee that as the promotion was being made in that month only, his case would not be considered at the time of the general increments to the staff in January 1973. By Exhibit W2 of 19-7-1973, he was further informed that he had been fitted in the new grades introduced by the Company with a consolidated salary of Rs. 500/- in the grade of Rs. 500-15-605-20-705. Exhibit W2 also went on to say "your duties as General Foreman involve all work of maintenance, overhaul and repairs. Your work is of a supervisory nature and the maintenance personnel working under the engineering foreman will also work under you as and when required. Your shift hours will depend upon the exigencies of work and will be fixed by Dr. J. Coelho. In view of the supervisory nature of your work, you will not be eligible for any overtime".

Exhibit W2 having been produced by the concerned employee himself it can safely be held that Dominic Fernandes held the post of a General Foreman and was receiving a consolidated salary of Rs. 500/- per month. Though Dominic Fernandes had had no engineering degree or diploma or certificate or experience in bottling section with similar plants, his merit and abilities had been recognised and he was able to get promoted to the post of a General Foreman.

Now in his statement, Dominic Fernandes has stated thus. "Since January 1973 I was doing the work of supervision in the bottling section. I used to look after the washing machine, bottling machine, labelling machine, pasturising machine and the packing of bottles in the Factory. I have operated all the machines in the bottling section. I used to relieve the workman at the above machines for lunch and other things and also whenever they used to be absent. I used to

look after the repairing of the machines also in the event of any breakdown.

The factory manager was the superior above me and there was no one else in between".

From the above statement of Dominic Fernandes, it is clear that he was next in rank to the Factory Manager. It is also evident that the work attended to by Dominic Fernandes could have been, by and large, of a supervisory nature only. The relieving of the workmen at the various machines for lunch and other things by Dominic Fernandes would mean that he was working even during the lunch break. In terms of Exhibit W2, he could have had no claim for overtime for working during the lunch break, a fact which has to be borne in mind in deciding on the question of his status. A workman would be entitled to overtime wages, if he was to work during the break hour in the shift in which he is working. There is no assertion by Dominic Fernandes that in spite of Exhibit W2 he was in receipt of overtime wages. On the other hand, he has admitted that he did not receive any overtime wages after Exhibit W2 and that officers were not entitled to get overtime allowance. Further on Dominic Fernandes stated that Dr. Coelho was the Factory Manager and used to assign him day to day work in the bottling section and that above Dr. Coelho, there was an executive head of the Company. This day to day assignment of work by the Factory Manager cannot have the effect of lowering the status of the supervisory nature of the work.

He went on to assert that he could not appoint or remove or charge sheet any workman. The power to appoint, remove or initiate disciplinary proceeding is not necessarily an attribute of work of a supervisory nature.

He said that he did not have an entry gate separate from the workmen. This circumstance is obviously without any significance as he had to admit in cross examination that there was no compound wall around the factory premises and no gateway also for entering into the factory premises.

He stated that he was using the general W.C. and wash-room set apart for the workmen. Unless there is something on record to show that he tried to use the W.C. and wash-room meant for the superior scale employees and was asked not to do so, this assertion means little or nothing. It is a matter of one's convenience and the proximity of the W.C. and washroom whenever a call for making use of them presents itself.

From Dr. Coelho (M.W.1) it was elicited that no chair and table had been provided to Dominic Fernandes in the bottling section and this fact was urged as indicating that the latter held a position, no better than that of an ordinary workman. But what M.W.1 has stated is that wherever accommodation was available chairs and tables had been provided for chemists. The point is left there. Was there available space in the bottling section? Had a request for chair and table for Dominic Fernandes been turned down? There is no material on record to enable one to answer these questions.

In answering questions as to details of his work, Dominic Fernandes got himself into difficulties during his cross examination. He was asked as to how many workers were engaged on the bottling machine. His reply was one to three normally though one man could also do the work. He could give no reasons as to why three workmen were employed at the filling of the bottles when only one person could attend to the work. He had also to say that he did not know if the turn out of production would be less with only one person working than when three persons worked at the bottling machine.

In examination in chief itself he had stated that he was doing the work of supervision in the bottling section. He sought to clarify this when under cross examination and his clarification reads thus "By my statement that I used to supervise in the bottling section, I mean that I used to look after the machinery, meaning I used to work the machinery". That this clarification was an attempt to get out of the supervisory nature of his work which he had admitted in examination in chief is clear from the replies to the questions that followed the above clarification. The relevant portion runs thus "one to three workmen used to work on the bottling machine. Three workers used to be engaged at the pasturizing machine. Two persons used to work on the labelling machine and three persons used to work on the filling machine. Four persons were employed for feeding and unloading the pasturizing machine. Two workers were engaged in the packing section. Four workers were feeding the washing machine. The remaining ten used to attend to the carton making work. When every worker was employed as men-

tioned above I used to do the filling of the beer bottles". This was not good or healthy for his case. So he tried to repair the damage caused to his case by saying that he alone attended to the bottling work and could not explain as to why three workers were provided for it when one alone could do the work.

There were no written instructions given to Dominic Fernandes in regard to the work of supervision—a fact admitted by M.W.1. However the absence of written instructions cannot mean that Dominic Fernandes was not a General Foreman or that his duties were not of a supervisory nature. Exhibit W1 which is the order promoting him to the post of the General Foreman has informed him that his case for increment would not be considered along with the other members of the Staff. Exhibit W2, by which he was fitted in a new grade, has referred to the nature of his work as being supervisory in two places. He has admitted that he knows English. So he cannot have been unaware of his status as a General Foreman with duties of a supervisory nature whose shift hours depended on the exigencies and who had no claim for overtime wages.

He has stated in his deposition that unlike other workers he used to visit the company in the company's vehicle. His companions in the vehicle used to be a chemist who was being referred to as Junior Officer, a Boilerman and two others, who, according to Dominic Fernandes, were clerks. One of these two was in charge of the stores and regarding the other he denied knowledge if he was in charge of the administration. It was admitted also that at lunch break the van used to take Dominic and the said persons to Ponda and bring them back to the factory after lunch break.

Exhibit M11 to M19 are bills for the supplies of various spare parts etc. to the company and these are signed by Dominic Fernandes on behalf of the Company for having received the articles. The explanation given by Dominic Fernandes is that he was sent to get the articles and hence he signed. It is important to notice that all these bills are after the date of Exhibit W1. Conveniently enough, Dominic Fernandes stated that he did not know if any other worker was sent to get spare-parts at any time.

Exhibit M1 to M10 are overtime sheets in respect of 10 workers in the bottling section. On all these sheets, there are the signatures of Dominic Fernandes in the column meant for supervisor's signature for many dates of November 1973. The only explanation given by Dominic Fernandes is that he signed as instructed by Dr. Coelho, though he could not say why he was instructed to so sign. The explanation is not convincing.

In the concluding stages of his cross examination, he prevaricated and said that he did not understand the contents of Exhibit W2. He did not understand the contents even though Exhibit W2 was read out to him. He did not know what were the duties assigned to him under Exhibit W2. He did not know that he was not entitled to any overtime allowance under Exhibit W2. He had, however, to admit that though there were occasions when he had worked overtime, he was not paid for the overtime after the date of Exhibit W2.

In cross examination, he also stated that it would not be correct to say that he used to get his tea from the management along with Coelho and others. There is no other positive assertion by Dominic Fernandes on this point. Dr. Coelho was questioned on this point in cross examination and he replied that Dominic Fernandes mostly used to send some boy to get his tea which he used to drink in the bottling section. Neither versions are positive enough to help in arriving at a conclusion. If Dominic Fernandes was going out for tea along with other workers, he should have clearly made such a statement. The fact that he did not refer to this matter of his tea in examination in chief can only mean that he was not urging this for finding support to his case. On behalf of the management, the question was put in cross examination and hence on his behalf the matter was traversed in the cross examination of M.W.1 who it may be mentioned also did not say anything in his examination-in-chief. The matter is not of much significance in the circumstances. MW1 stated that as a General Foreman, Dominic Fernandes was not in the same category as the other workers of the Company; he was in a position of supervising the work of others and giving others direction as to the work they had to do. He could requisition the vehicle of the Company; he was entitled to place orders with other engineering concerns for fabricating any essential parts of the machinery; and he could also purchase spare parts against delivery challans.

He also stated that Dominic Fernandes was to look after the bottling in the breweries and also the maintenance of

the machines and was to supervise the entire process connected with the bottling right from the washing of the bottles to the stage of sealing, labelling and packing.

In cross examination, the points elicited from MW1 was that Dominic Fernandes could not suspend or terminate the service of any of the employees or make an appointment of any. The power to suspend, terminate or appoint is not, to my mind, necessary in every employee holding the post of supervisory category and its absence cannot be taken to mean that because of it, there was no supervisory functioning by Dominic Fernandes. Another point related to there being no written instructions given to Dominic Fernandes in regard to supervisory work. This circumstance also by itself is not of importance.

Now, Exh. M1 to M10 contain signatures of Dominic Fernandes in the supervisor's signature column in respect of overtime earning for 10 employees working in the bottling section. The explanation offered by Dominic Fernandes that he put his signature at 58 places in Exh. M1 to M10 at the instructions of Dr. Coelho, is not convincing. No reasons are even suggested as to why Dr. Coelho (MW1) should have done so. No questions have been put to Dr. Coelho in this behalf. Exh. M11 to M20 are bills in respect of spare parts, etc., supplied to the Company and these are also signed by Dominic Fernandes in receipt of the items supplied. The explanation offered by him that he was sent to bring these articles seems to be merely to get out of a tight corner. There is no suggestion that any other admitted workman had also been sent to bring any spares and had so signed the supplier's bill. In my view Exh. M1 to M20 support the version given by MW1 in a natural and reasonable way and the explanations given by Dominic Fernandes do not seem to be so.

The result of the above discussions are:

- (1) The concerned employee joined service of the 2nd party as a driver on salary of Rs. 150/- in 1970 (See Exh. M40);
- (2) Though he had no degree or diploma, his efficiency and approach as a mechanic earned due recognition and he was promoted by Exh. W1 as a General Foreman on a consolidated salary of Rs. 475/- per month in the grade of Rs. 425-25-575 with effect from 1-10-1972;
- (3) By Exh. W2 he was fitted in new grade of pay i.e. Rs. 500-15-605-705, with effect from 1-8-1973 and he began to get Rs. 500/- per month;
- (4) His duties were specified as being supervisory in nature involving all work of maintenance, overhaul and repairs;
- (5) His shift hours were to depend on the exigencies of work and were to be fixed by Dr. Coelho and he was eligible for any overtime;
- (6) Though he had worked overtime, after the date of Exh. W2, he has not asked for or been paid any overtime allowance;
- (7) Above him there were only Dr. Coelho and the Executive Head of the Company as superiors;
- (8) He has signed on Exhs. M11 to M20 for receipt of spare parts etc. on the bills given by the suppliers and he has signed the overtime sheets (Exhs. M1 to M10) in respect of 10 workmen as a supervisor and his explanation in regard to these documents is not convincingly reasonable or natural;
- (9) His assertion that he was unaware of his duties and functions and did not understand the contents of Exh. W2 cannot be believed because at an earlier stage in his statement he said that he knew English;
- (10) No chair and table had been provided for him in the Bottling Section, presumably because there was no space;
- (11) He used to come to the factory in the company's Pick-up Van with chemists and clerks and the van used to take him and the others to Ponda at lunch break and bring them back to the Factory after the lunch break; and
- (12) He has not created an impression of being truthful in his evidence.

Now if even a nominal value is given to the facility of the pick-up van which Dominic Fernandes could have availed

of and did avail of, his wages exceeded Rs. 500/- on the material date. Shri Mohan Nair, the learned representative for Dominic Fernandes argued that there was no assertion that every day the van was available to him. In the admission made by Dominic Fernandes there are no qualifying words at all to even suggest a restricted use of the van by him. So this point fails.

The learned representative of the First Party workman referred to the decision in Ananda Bazar Patrika V/s. Their employees, 1969 (II) LLJ 670. The guidelines laid down in the said ruling, when applied to the facts held, proved here, cannot help the first party. The circumstances in this case are that Dominic Fernandes was a General Foreman according to Exh. W2; there were 9 or 10 workmen working in the Bottling section under his supervision; the Factory manager and the Executive head of the concern were the only superiors above him; he made no claim to and got no overtime since the date of Exh. W2; and he had the use of the Company van alongwith staff members of the company which was an amenity availed of by him in addition to his salary of Rs. 500/- per month.

Shri Mohan Nair, the learned representative of the First Party, also argued that that the reference in this case was made with the consent of both parties and hence the 2nd party cannot now go back on its consent and contest the status of Dominic Fernandes. The argument cannot be accepted. The consent of the parties for a reference only obviates the necessity of applying of mind and finding the existence or apprehension of a dispute on a subjective basis on the part of the Government making the reference. That there was no concession on the point of the status of Dominic Fernandes by the management, when it agreed for a reference being made, can be gathered from Annexure 'H' to the Claim Statement filed before this Tribunal. Annexure 'H' is a report of conciliation by the Labour Commissioner showing that even before him the status of Dominic Fernandes was questioned and conciliation failed and that the parties had agreed for a reference being made for adjudication without prejudice to their respective contentions. Therefore this particular contention is without any force.

In conclusion, Dominic Fernandes is held to be not a workman within the meaning of the Industrial Disputes Act, 1947.

Inform the parties of the above finding.

Dona Paula.

(R. V. KOLLALI)

2nd November, 1977.

Presiding Officer.

Notification

No. 1/1721/76-LAB(ESI)/20

In pursuance of regulation 75 of the Employees' State Insurance (General) Regulation, 1950 and in consultation with the Employees' State Insurance Corporation and in supersession of the Government Notification No. 1/1721/76-LAB(ESI)/20 dated 24-6-1976 the Administrator of Goa, Daman and Diu hereby constitutes a Medical Board for the Union territory of Goa, Daman and Diu consisting of the following members for the purposes of the said Regulation and the cases arising under sections 54 and 54A of the Employees' State Insurance Act, 1948:—

1. Professor and Head of the Department of Medicine, Goa Medical College, Panaji — Chairman.
2. Professor and Head of Department of Orthopaedics, Goa Medical College, Panaji — Member.
3. Professor and Head of Department of Ophthalmology, Goa Medical College, Panaji — Member.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. M. Sardesai, Under Secretary, Industries and Labour.
Panaji, 21st January, 1978.

Finance Department (Revenue and Control)

Notification

No. Fin(Rev)/2-36/40/77

In exercise of powers conferred by section 10A of the Goa, Daman and Diu Sales Tax Act, 1964 (4 of 1964), the Govern-

ment of Goa, Daman and Diu hereby exempts the sales of the following goods made by a dealer registered under the Goa, Daman and Diu Sales Tax Act to the Goa Cancer Society, Panaji, from payment of tax, under the said Act:—

(1) Building materials, namely:—

- (i) Granite metal.
- (ii) sand
- (iii) bricks
- (iv) laterite stones
- (d) timber
- (vi) nails
- (vii) iron and steel as defined in Section 14 of the Central Sales Tax Act, 1956
- (viii) door and window fittings
- (ix) glass sheets
- (x) binding wire
- (xi) lime
- (xii) electrical fittings and accessories thereof, other than the items specified in entry 17 of the First Schedule
- (xiii) mosaic tiles
- (xiv) red oxide
- (xv) plumbing and sanitary fittings and accessories thereof
- (xvi) glazed tiles
- (xvii) A. C. sheets and pipes and accessories thereof, and
- (xviii) Paints

(2) Hospital equipment, namely:—

- (i) Sterilizers
- (ii) X-Ray machines
- (iii) laboratory equipment other than the items specified in entry 20 of the First Schedule
- (iv) surgical instruments and medical equipments
- (v) weighing scales, and
- (vi) absorbent cotton wool and surgical cotton.

Provided that the registered dealer claiming exemption furnishes to the Appropriate Assessing Authority a declaration in the following form issued by the person in charge of the said Society:—

"Declaration by the person in charge of the management of the Goa Cancer Society, Panaji-Goa.

I, ... (name) ... (state designation or status) do hereby certify that the goods sold by ... (name of the dealer), holder of Registration Certificate No. ... under the Goa, Daman and Diu Sales Tax Act, 1964,

as per his cash memo/bill No. ... dated ... for Rs. ... are purchased by the Goa Cancer Society, Panaji-GOA, for use in the Hospital/construction of the buildings of the Society.

Place ...

Signature ...

Date ...

Status ...

This exemption shall remain in force upto and inclusive of the 31st March, 1979.

Panaji, ...

By order and in the name of the Administrator of Goa, Daman and Diu.

S. S. Sukhtankar, Under Secretary (Finance).

Panaji, 18th January, 1978.

Law Department (Legal Advice)

Order

No. LD/4/26/77

In exercise of the powers conferred by Sub-Section (1) of Section 57 of the Indian Partnership Act, 1932 (9 of 1932) the Lieutenant Governor of Goa, Daman and Diu hereby appoints the Assistant Public Prosecutor, Diu as Registrar of Firms for the purpose of the said Act within Diu area, with effect from 7-12-1977.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

B. S. Subbanna, Under Secretary (Law).

Panaji, 21st January, 1978.

Order

No. LD/4/26/77

In exercise of the powers conferred by section 6 of the Indian Registration Act, 1908 (16 of 1908), the Lieutenant Governor of Goa, Daman and Diu hereby appoints the Assistant Public Prosecutor, Diu as Sub-Registrar, Diu with effect from 7-12-1977.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

B. S. Subbanna, Under Secretary (Law).

Panaji, 21st January, 1978.